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BEFORE THE  
BOARD OF VOCATIONAL NURSING  
AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

Case No. VN-2008-88

ALVIN ONATE MIRANDA  
5133 Rockland Avenue  
Los Angeles, CA 90041

OAH No. 2009100819

Applicant for Vocational Nurse License

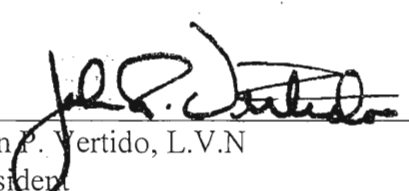
Respondent.

**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the final Decision in the above-entitled matter.

This Decision shall become effective on June 23, 2010.

IT IS SO ORDERED this 24<sup>th</sup> day of May, 2010.

  
\_\_\_\_\_  
John P. Vertido, L.V.N.  
President

**BEFORE THE  
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues  
Against

**Alvin Onate Miranda**  
5133 Rockland Avenue  
Los Angeles, CA 90041

Vocational Nurse License Application

Respondent.

Case No. VN-2008-88

OAH No. 2009100819

**PROPOSED DECISION**

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on March 22, 2010.

Michael A. Cacciotti, Deputy Attorney General, represented the Complainant.

Respondent appeared in person and was represented by Paul S. Geller, Attorney at Law.

Oral and documentary evidence and evidence by way of official notice was received and the matter then argued.

The Administrative Law Judge now finds, concludes and orders as follows:

**FACTUAL FINDINGS**

*Parties*

1. Teresa Bello-Jones, J.D., M.S.N., R.N., Complainant herein, brought the Statement of Issues in her official capacity as the Executive Office of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs (Board).

2. On February 22, 2008, the Board received an application for Vocational Nurse License from Alvin Onate Miranda, Respondent herein. On February 11, 2008, Respondent certified under penalty of perjury to the truthfulness of all statements, answers and representations in the application. The Board denied the application on January 13, 2009.

Respondent timely requested a hearing resulting in this proceeding.

### *Criminal Convictions*

3. On September 12, 2007, Macy's Loss Prevention Staff at the Glendale Galleria notified officers with the Glendale Police Department that a male they had seen loitering in their public restrooms everyday for the past two weeks was now in the restroom attempting to engage in lewd acts with Macy's Loss Prevention Agent R.S. R. S. had reported that while he was in the third stall of the restroom, a male (Respondent) slid his left foot under R.S.'s stall and tapped it twice, indicating that he wanted to engage in a lewd act with R.S. At approximately 1545 hours, DPU officers responded to the Macy's restrooms and performed an undercover operation. While one of the undercover officers was in the third stall, Respondent entered the second stall and tapped his shoe twice, indicating that he wanted to engage in a lewd act with the officer. Respondent was later placed under arrest for violating Penal Code section 647, subdivision (d). Respondent admitted to the officers that approximately one month earlier, he engaged in a lewd act with another male while in the Macy's restroom, and that he had been at the Macy's restroom everyday since hoping to get involved in some type of sexual activity. Respondent also admitted that he had intended to engage in sexual activity when he tapped his foot twice while the undercover officer was in the stall next to him and, at a later time, when he pushed open the handicap stall door and stepped inside and smiled at the undercover officer, while the undercover officer was in the handicap stall.

4. As a result of his conduct set forth in Finding 3 on November 9, 2007, in the criminal proceeding titled *People v. Alvin Onate Miranda* (Super. Ct. Los Angeles, 2007, Case No. 7GN05369), Respondent was convicted by the court on his plea of nolo contendere to violating Penal Code section 647, subdivision (d) (disorderly conduct: loitering in or about a public toilet for the purpose of engaging or soliciting a lewd act, a misdemeanor).

5. Respondent's conduct set forth in Findings 3 and 4, evidences, to a substantial degree, present or potential unfitness to perform as a licensed vocational nurse in a manner consistent with the public health, safety, or welfare. Accordingly, Respondent's crime is substantially related to the qualifications, functions and duties of a licensed vocational nurse.

6. Respondent's conduct set forth in Finding 3 and 4, if done by a licensed vocational nurse, would be grounds for suspension or revocation of licensure.

### *Rehabilitation*

7. As a result of the conviction, imposition of Respondent's sentence was suspended and Respondent was placed on summary probation for a period of 12 months under terms and conditions, including that Respondent attend 24 sexual compulsive anonymous meetings.

8. Respondent timely completed the 24 sexual compulsive meetings. He fully complied with all other conditions of probation and successfully completed same. Thereafter

he petitioned the Court for expungement of the conviction. On February 18, 2009, by Court order, the conviction was expunged pursuant to the provisions of Penal Code section 1203.4. Respondent has suffered no other conviction and he is, presently, in conformity to and in compliance with society's norms and rules.

9. Respondent is presently employed at Americana as a sales associate and he is able to contribute to his family's finances. His immediate family consists of his father and his mother together with extended family members. He attends church regularly with an aunt and a cousin and he lives with his father and his uncle. His mother remains in the Phillipines and suffers from breast cancer. Respondent calls her on a daily basis. Respondent has stability of family life and fulfills familial obligations.

10. Respondent was open and candid with the police after his arrest; was open and candid with the Board in the application process and was open and candid in his testimony. Respondent, in demeanor, is soft-spoken, well-mannered and non-threatening. He has a change in attitude from that which existed in 2007 at the time of his misdemeanor. He is contrite and remorseful about his wrongful conduct and takes full responsibility for same.

### LEGAL CONCLUSIONS

1. Cause exists for denial of Respondent's application pursuant to Business and Professions Code sections 2866, 480, subdivision (a)(1) and (a)(3) as those sections interact with California Code of Regulations, title 16, section 2521, by reason of Findings 3 and 4.

2. Cause exists for denial of Respondent's application pursuant to Business and Professions Code sections 2866, subdivision (f) and 480, subdivision (a)(3), as those sections interact with Business and Professions Code section 2878, subdivision (a), (f) and (k), by reason of Findings 3, 4, and 5.

#### *Licensing Considerations*

3. California Code of Regulations, title 16, section 2522, sets forth criteria of rehabilitation that have been developed by the Board to evaluate the rehabilitation of an applicant for issuance of a license in considering whether or not to deny the issuance on account of a crime or act committed by Respondent. Additionally, the public interest must be considered, in that, the objective of an administrative proceeding relating to licensing is to protect the public. *Fahmy v. MBC* (1995) 38 Cal.App.4<sup>th</sup>, 810, 817; *Ex Parte Brounsell* (1778) 2 Cowp. 829, 98 Eng.Rep.1385.

4. Respondent's crime has been expunged. Respondent has suffered no other conviction. Two and one-half years have elapsed since the time of his wrongful conduct. In that time, Respondent has achieved the rehabilitation set forth in Findings 7 through 10.

Based on Respondent's rehabilitation to date the issuance of a probationary license<sup>1</sup> is consistent with the public interest.

## ORDER

The application of Alvin Onate Miranda for a vocational nurse's license is denied, however, that order shall be stayed and a probationary license issued to Respondent for a period of two years, subject to the following terms and conditions of probation:

### 1. OBEY ALL LAWS

Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law, including alleged violations, to the Board within five (5) days of occurrence.

To ensure compliance with this condition, Respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within thirty (30) days of the effective date of the decision, unless the Board determines that fingerprints were previously submitted by the Respondent to the Board.

Respondent shall also submit to the Board a recent 2" x 2" photograph of himself within thirty (30) days of the effective date of the decision.

If Respondent is under a criminal court order, including probation or parole, and the order is violated, it shall be deemed a violation of these probation conditions.

### 2. COMPLIANCE WITH PROBATION PROGRAM

Respondent shall fully comply with the conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Probation Program.

Upon successful completion of probation, the Respondent's license will be fully restored.

### 3. SUBMIT WRITTEN REPORTS

Respondent shall submit or cause to be submitted, under penalty of perjury, any written reports, declarations and verification of actions as required by the Board or its representatives. These reports or declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Program.

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<sup>1</sup> The Board's standard probation terms shall be imposed with the exception of the term pertaining to cost reimbursement, as costs cannot be awarded in a case pertaining to a license application.

Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

In the first report, Respondent shall provide a list of all states and territories where he has ever been licensed as a vocational/practical nurse, psychiatric technician, or registered nurse. Respondent shall provide information regarding the status of each license and any change in license status during the period of probation. Respondent shall inform the Board if he applies for or obtains a new nursing or psychiatric technician license during the period of probation.

Respondent shall provide a copy of the Board's decision to the regulatory agency in every state and territory in which he has applied for or holds a vocational/practical nurse, psychiatric technician and/or registered nurse license.

4. NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S)

Respondent shall notify the Board in writing, within five (5) days of any change in address or telephone number(s).

Respondent's failure to claim mail sent by the Board may be deemed a violation of these probation conditions.

5. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE

Respondent shall notify the Board, in writing, within five (5) days, if he leaves California to reside or practice in another state. Periods of residency or practice outside of California shall not apply toward a reduction of this probation time period. If Respondent resides or practices outside of California, the period of probation shall be automatically extended for the same period he resides or practices outside of California. The Respondent shall provide written notice of the Board within five (5) days of any change of residency or practice.

6. MEETINGS WITH BOARD REPRESENTATIVE(S)

Respondent shall appear in person at meetings as directed by the Board or its designated representatives.

7. NOTIFICATION TO EMPLOYER(S)

When currently employed or applying for employment in any capacity in any health care profession, Respondent shall notify his employer of the probationary status of Respondent's license. This notification to the Respondent's current health care employer shall occur no later than the effective date of the Decision. The Respondent shall notify any prospective health care employer of his probationary status with the Board prior to accepting such employment. At a minimum, this notification shall be

accomplished by providing the employer or prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit to the Board all performance evaluations and any other employer related reports as required by the Board. Respondent shall notify the Board, in writing, of any difficulty in securing employer reports within five (5) days of such an event.

Respondent shall notify the Board, in writing, within five (5) days of any change in employment status. Respondent shall notify the Board in writing, if he is terminated or separated, regardless of cause, from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination or separation.

#### 8. EMPLOYMENT REQUIREMENTS AND LIMITATIONS

Respondent shall work in his licensed capacity in the State of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

Respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

#### 9. SUPERVISION REQUIREMENTS

Before commencing or continuing employment in any health care profession, Respondent shall obtain approval from the Board of the supervision provided to the Respondent while employed.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation except as approved, in writing, by the Board.

10. COMPLETION OF EDUCATIONAL COURSE(S)

Respondent, at his own expense, shall enroll and successfully complete a course(s) substantially related to the violation(s) no later than the end of the first year of probation.

The coursework shall be in addition to that required for license renewal. The Board shall notify the Respondent of the course content and number of contact hours required. Within thirty (30) days of the Board's written notification of assigned coursework, Respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the course, Respondent shall submit "original" completion certificates to the Board within thirty (30) days of course completion.

11. MAINTAINANCE OF VALID LICENSE

Respondent shall, at all times, maintain an active current license with the Board including any period of suspension.

If an initial license must be issued (Statement of Issues) or a license is reinstated, probation shall not commence until a license is issued by the Board. Respondent must complete the licensure process within two (2) years from the effective date of the Board's decision.

Should Respondent's license expire, by operation of law or otherwise, upon renewal or reinstatement, Respondent's license shall be subject to any and all conditions of this probation not previously satisfied. *Expires: 12/31/11*

12. LICENSE SURRENDER

During probation, if Respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, Respondent may surrender his license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request without further hearing. Upon formal acceptance of the tendered license, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A licensee who surrenders his license may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision for the surrender:

- Three (3) years for reinstatement of a license surrendered for any reason



other than a mental or physical illness; or

- One (1) year for a license surrendered for a mental or physical illness.

13. TAKE AND PASS LICENSURE EXAMINATION *- not required per KN on 4/22/10.*

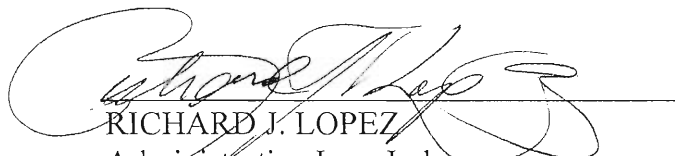
Prior to commencing practice, Respondent shall take and pass the licensure exam currently required of new applicants within two (2) years from the effective date of the Board's decision. Respondent shall pay the established examination fees.

This probationary period shall not commence until the Respondent has successfully passed the licensure examination and a license is issued by the Board.

14. VIOLATION OF PROBATION

If Respondent violates the conditions of his probation, the Board, after giving the Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (denial/revocation/suspension) of the Respondent's license. If during probation, an accusation or petition to revoke probation has been filed against the Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

Dated: April 8, 2010

  
RICHARD J. LOPEZ  
Administrative Law Judge  
Office of Administrative Hearings

RJL:jm

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 GLORIA A. BARRIOS  
Supervising Deputy Attorney General  
3 MICHAEL A. CACCIOTTI, State Bar No. 129533  
Deputy Attorney General  
4 300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
5 Telephone: (213) 897-2932K  
Facsimile: (213) 897-2804  
6  
7 Attorneys for Complainant  
8

9 **BEFORE THE**  
10 **BOARD OF VOCATIONAL NURSING**  
**AND PSYCHIATRIC TECHNICIANS**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. VN-2008-88

13 ALVIN ONATE MIRANDA  
5133 Rockland Avenue  
14 Los Angeles, CA 90041

**STATEMENT OF ISSUES**

15 Respondent.  
16

17 Complainant alleges:

18 **PARTIES**

19 1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this  
20 Statement of Issues solely in her official capacity as the Executive Officer of the Board of  
21 Vocational Nursing and Psychiatric Technicians ("Board"), Department of Consumer Affairs.

22 2. On or about February 22, 2008, the Board received an application for a  
23 vocational nurse license from Alvin Onate Miranda ("Respondent"). On or about February 11,  
24 2008, Respondent certified under penalty of perjury to the truthfulness of all statements, answers,  
25 and representations in the application. The Board denied the application on January 13, 2009.

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3. Business and Professions Code (“Code”) section 2866 provides, in

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

• • • •

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made . . .

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

• • • •

6. Code section 2878.6 states:

2

1                   7.       California Code of Regulations, title 16, section 2521, states, in pertinent  
2 part:

3                   For the purposes of denial, suspension, or revocation of a license pursuant  
4 to Division 1.5 (commencing with Section 475) of the Business and Professions  
5 Code, a crime or act shall be considered to be substantially related to the  
6 qualifications, functions or duties of a licensed vocational nurse if to a substantial  
degree it evidences present or potential unfitness of a licensed vocational nurse to  
perform the functions authorized by his license in a manner consistent with the  
public health, safety, or welfare . . .

7                   **CAUSE FOR DENIAL**

8                   **(Criminal Conviction)**

9                   8.       Respondent's application is subject to denial pursuant to Code sections  
10 2866, 480, subdivision (a)(1), and 480, subdivision (a)(3), in that on or about November 9, 2007,  
11 in the criminal proceeding titled *People v. Alvin Onate Miranda* (Super. Ct. Los Angeles, 2007,  
12 Case No. 7GN05369), Respondent was convicted by the court on his plea of nolo contendere to  
13 violating Penal Code section 647, subdivision (d) (disorderly conduct: loitering in or about a  
14 public toilet for the purpose of engaging or soliciting a lewd act, a misdemeanor). The  
15 imposition of Respondent's sentence was suspended and Respondent was placed on summary  
16 probation for a period of 12 months under terms and conditions, including that Respondent  
17 attend 24 sexual compulsive anonymous meetings. Respondent's conviction would constitute  
18 cause for discipline against him pursuant to Code section 2878, subdivision (f), were he a  
19 licentiate of the Board.

20                   9.       The circumstances of the crime are as follows: On or about September 12,  
21 2007, Macy's Loss Prevention Staff at the Glendale Galleria notified officers with the Glendale  
22 Police Department that a male they had seen loitering in their public restrooms everyday for the  
23 past two weeks was now in the restroom attempting to engage in lewd acts with Macy's Loss  
24 Prevention Agent R. S. R. S. had reported that while he was in the third stall of the restroom, a  
25 male (Respondent) slid his left foot under R. S.'s stall and tapped it twice, indicating that he  
26 wanted to engage in a lewd act with R. S. At approximately 1545 hours, DPU officers responded  
27 to the Macy's restrooms and performed an undercover operation. While one of the undercover  
28 officers was in the third stall, Respondent entered the second stall and tapped his shoe twice,

1 indicating that he wanted to engage in a lewd act with the officer. Respondent was later placed  
2 under arrest for violating Penal Code section 647, subdivision (d). Respondent admitted to the  
3 officers that approximately one month earlier, he engaged in a lewd act with another male while  
4 in the Macy's restroom, and that he had been at the Macy's restroom everyday since hoping to  
5 get involved in some type of sexual activity. Respondent also admitted that he had intended to  
6 engage in sexual activity when he tapped his foot twice while the undercover officer was in the  
7 stall next to him and, at a later time, when he pushed open the handicap stall door and stepped  
8 inside and smiled at the undercover officer, while the undercover officer was in the handicap  
9 stall.

10 **PRAYER**

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
12 alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric  
13 Technicians issue a decision:

- 14 1. Denying the application of Alvin Onate Miranda for a vocational nurse  
15 License;  
16 2. Taking such other and further action as deemed necessary and proper.  
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18 DATED: July 20, 2009

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22 TERESA BELLO-JONES, J.D., M.S.N., R.N.  
23 Executive Officer  
24 Board of Vocational Nursing and Psychiatric Technicians  
25 Department of Consumer Affairs  
26 State of California

27 Complainant  
28